

**NO. PD-0254-18**

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IN THE COURT OF CRIMINAL APPEALS OF TEXAS 9/7/2018  
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CRAIG DOYAL,

*Appellee*

v.

STATE OF TEXAS,

*Respondent*

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BRIEF OF AMICUS CURIAE  
TEXAS CONFERENCE OF URBAN COUNTIES

IN SUPPORT OF APPELLEE

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John B. Dahill  
General Counsel  
State Bar No. 05310430  
500 W. 13th Street  
Austin, Texas 78701  
(512) 476-6174 - Phone  
(512) 476-5122 - Facsimile  
Counsel for Amicus Curiae  
Texas Conference of Urban  
Counties

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## **IDENTITY AND INTEREST OF AMICUS CURIAE**

The Texas Conference of Urban Counties (Urban Counties) is a non-profit association of 38 Texas counties, comprising approximately 80% of the state's population. Urban Counties provides advocacy and educational services to its members.

Urban Counties joined the Texas Municipal League, the Texas City Attorneys Association, and the Texas Association of Counties in submission of joint Brief of Amici Curiae to explain to the Court that guidance in this matter is needed by all governing bodies in Texas, but not expressing a position on the substantive issue in this case. Urban Counties now wishes to inform the Court that it believes Government Code Section 551.143 is unconstitutionally vague.<sup>1</sup>

## **SUMMARY OF ARGUMENT**

Government Code Section 551.143 fails to define the criminal offense contained therein with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. See, *Kolender v. Lawson*, 461 U.S. 352 (1983).

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<sup>1</sup> The author of this brief has received no fee for its preparation.

## ARGUMENT

Section 551.001, Government Code, defines “deliberation” to mean “a verbal exchange during a meeting between a quorum of a governmental body ... concerning an issue within the jurisdiction of the governmental body or any public business.” The provision does not provide that “deliberation” can occur over a series of meetings. Nor is “deliberation” defined without regard to a meeting. The Legislature could have defined “deliberation” to mean “a verbal exchange between a quorum of a governmental body,” but it did not.

Despite the clear definition, members of the Montgomery County Commissioners Court have been charged with a crime for allegedly participating in a series of meetings – none of which included a quorum of the Commissioners Court. The indictment charging Judge Doyal conveniently omits the confusion that exists by virtue of the definition of “deliberation.” Here is the language in the indictment:

THE GRAND JURY, for the County of Montgomery, State of Texas, duly selected, empaneled, sworn, charged, and organized as such by the 22nd Judicial District Court for said County, upon their oaths present in and to said Court that Craig Doyal, on or about August 11, 2015 and continuing through August 24, 2015, and before the presentment of this indictment, in the County and State aforesaid, did then and there as a member of a governmental body, to-wit: the Montgomery County Commissioners Court, knowingly conspire to circumvent Title 5 Subtitle A Chapter 551 of the

Texas Government Code (hereinafter referred to as the Texas Open Meetings Act), by meeting in a number less than a quorum for the purpose of secret deliberations in violation of the Texas Open Meetings Act, to-wit: *by engaging in a verbal exchange concerning an issue within the jurisdiction of the Montgomery County Commissioners Court*, namely, the contents of the potential structure of a November 2015 Montgomery County Road Bond....

[Emphasis added.]

Had the prosecutor tracked the actual definition of “deliberation” as found in Section 551.001, the indictment would have included the following words in **bold**:

THE GRAND JURY, for the County of Montgomery, State of Texas, duly selected, empaneled, sworn, charged, and organized as such by the 22<sup>nd</sup> Judicial District Court for said County, upon their oaths present in and to said Court that Craig Doyal, on or about August 11, 2015 and continuing through August 24, 2015, and before the presentment of this indictment, in the County and State aforesaid, did then and there as a member of a governmental body, to-wit: the Montgomery County Commissioners Court, knowingly conspire to circumvent Title 5 Subtitle A Chapter 551 of the Texas Government Code (hereinafter referred to as the Texas Open Meetings Act), by meeting in a number less than a quorum for the purpose of secret deliberations in violation of the Texas Open Meetings Act, to-wit: *by engaging in a verbal exchange **during a meeting between a quorum of the Montgomery County Commissioners Court** concerning an issue within the jurisdiction of the Montgomery County Commissioners Court*, namely,

the contents of the potential structure of a November 2015 Montgomery County Road Bond....

Of course, members of a governmental body cannot at the same time meet in numbers less than a quorum and in numbers constituting a quorum. So we understand why the Attorney General expanded Section 551.143 in Attorney General Opinion No. GA-0326 when interpreting the section to cover “successive gatherings” – it was the only way to give logical meaning to the provision. However, as stated in footnote 29 of Appellee’s Brief, interpreting 551.143 in that manner violates the Rule of Lenity and Section 311.035, Government Code (“...[A] statute or rule that creates or defines a criminal offense or penalty shall be construed in favor of the actor if any part of the statute or rule is ambiguous on its face or as applied to the case, including: (1) an element of the offense; or (2) the penalty to be imposed.”).

In its Brief on the Merits, Appellant states, “Statutes are not unconstitutionally vague merely because the words or terms employed in the statute are not defined. *See Engelking v. State*, 750 S.W.2d 213, 215 (Tex. Crim. App. 1988).” Appellants Brief on the Merits at p. 36. But the vagueness of the statute at issue is not because of the lack of definitions. Rather, the definitions provided in the Open Meetings Act create confusion. Nowhere in its brief does Appellant discuss the application of the definition of “deliberation” found in

section 551.001 with regard to vagueness, nor how that definition can be disregarded in applying section 551.143.

**PRAYER**

Urban Counties respectfully urges that this Honorable Court find Section 551.143, Government Code, to be unconstitutional for vagueness.

Respectfully submitted,

/s/ John B. Dahill  
John B. Dahill  
General Counsel  
State Bar No. 05310430  
500 W. 13th Street  
Austin, Texas 78701  
(512) 476-6174 - Phone  
(512) 476-5122 - Facsimile  
Counsel for Amicus Curiae  
Texas Conference of Urban  
Counties



## **CERTIFICATE OF SERVICE**

On September 6, 2018, I electronically filed this Brief of Amicus Curiae with the Clerk of Court using the ProDoc electronic filing system which will send notification of such filing to the following:

CHRIS DOWNEY  
The Downey Law Firm  
2814 Hamilton Street  
Houston, Texas 77004  
Email: [chris@downeylawfirm.com](mailto:chris@downeylawfirm.com)

DAVID CUNNINGHAM  
2814 Hamilton Street  
Houston, Texas 77004  
Email: [cunningham709@yahoo.com](mailto:cunningham709@yahoo.com)

JOSEPH R. LARSEN  
Gregor | Cassidy, PLLC  
700 Louisiana, Suite 3950  
Houston, Texas 77002  
Email: [jlarsen@grfirm.com](mailto:jlarsen@grfirm.com)

STACEY M. SOULE  
State Prosecuting Attorney of Texas  
P.O. Box 13046  
Austin, Texas 78711-3046  
Email: [information@spa.texas.gov](mailto:information@spa.texas.gov)

RUSTY HARDIN  
Email: [rhardin@rustyhardin.com](mailto:rhardin@rustyhardin.com)  
CATHY COCHRAN  
Email: [ccochran@rustyhardin.com](mailto:ccochran@rustyhardin.com)  
ANDY DRUMHELLER  
Email: [adrumbheller@rustyhardin.com](mailto:adrumbheller@rustyhardin.com)  
NAOMI HOWARD  
Email: [nhoward@rustyhardin.com](mailto:nhoward@rustyhardin.com)  
5 Houston Center  
1401 McKinney Street, Suite 2250  
Houston, Texas 77010

/s/ John B. Dahill  
John B. Dahill

## CERTIFICATE OF COMPLIANCE

Based on a word count run in Microsoft Word, this Brief of Amicus Curie contains 1,286 words.

/s/ John B. Dahill  
John B. Dahill